

STATE OF MICHIGAN
COURT OF APPEALS

WESTWICK SQUARE COOPERATIVE,

Petitioner-Appellant,

v

CITY OF WAYNE,

Respondent-Appellee.

UNPUBLISHED
September 16, 2014

No. 305463
Tax Tribunal
LC No. 00-269704

Before: FITZGERALD, P.J., and GLEICHER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Petitioner appeals as of right from the Michigan Tax Tribunal's final opinion and judgment adopting the decision of a hearing referee and dismissing petitioner's appeal of several property tax assessments for tax years 1999 through 2010. We affirm in part, reverse in part, and remand for further proceedings.

I. BACKGROUND AND PROCEDURAL HISTORY

Petitioner, a nonprofit corporation, owns a housing cooperative in respondent city of Wayne. The property development was constructed in the late 1960s under § 221(d)(3) of the National Housing Act, 12 USC 17151(d)(3), to provide housing for individuals through their membership in the corporation.¹

In August 1999, petitioner filed a petition in the Tax Tribunal to challenge the assessed and taxable values of its property. The case was held in abeyance while other cases involving nonprofit cooperative housing were resolved, during which petitioner filed various motions to amend the petition to add additional tax years through 2010.

¹ A housing cooperative constructed under § 221(d)(3) is subsidized by receiving below-market interest rate financing and mortgage insurance. See *Georgetown Place Coop v City of Taylor*, 226 Mich App 33, 36; 572 NW2d 232 (1997).

In August 2010, respondent moved for an order of default based on petitioner's failure to provide discovery and a valuation disclosure,² as previously ordered by the Tax Tribunal. The hearing referee denied the motion after petitioner filed its valuation disclosure, its prehearing statement, and answers to discovery requests. Respondent later moved for summary disposition under MCR 2.116(C)(8) and (10) on the ground that petitioner was relying on a capitalization-of-income approach to value the property, which had previously been rejected by the Tax Tribunal and appellate courts. Respondent also asserted that petitioner's "transfer value" approach for valuing the property had previously been rejected. Respondent sought dismissal on the ground that petitioner could not sustain its burden of proof under MCL 205.737(3), because its proposed valuation evidence was insufficient as a matter of law to support the proposed assessments.

The hearing referee determined that petitioner was offering the same valuation methodologies that had been rejected in other cases. After concluding that petitioner had no other competent evidence to challenge the accuracy of the tax assessments and that it would not have an evidentiary basis for making an independent determination of value, "other than to affirm that the assessments were established by methods approved by the State Assessor's Manual," the hearing referee concluded that respondent's motion for summary disposition should be granted under MCR 2.116(C)(8) and (10), and that petitioner's appeal should be dismissed. Neither party filed exceptions to the hearing referee's decision, which the Tax Tribunal thereafter adopted as its final judgment.

II. STANDARD OF REVIEW

The Tax Tribunal is required to review a hearing officer's or referee's proposed decision de novo. *President Inn Props, LLC v City of Grand Rapids*, 291 Mich App 625, 635-636; 806 NW2d 342 (2011). In the absence of fraud, we limit our review of the Tax Tribunal's decision to whether the tribunal committed an error of law or adopted a wrong principle. Const 1963, art 6, § 28; *Mich Props, LLC v Meridian Twp*, 491 Mich 518, 527-528; 817 NW2d 548 (2012). We review the Tax Tribunal's summary disposition rulings de novo. *Briggs Tax Serv, LLC v Detroit Pub Sch*, 485 Mich 69, 75; 780 NW2d 753 (2010).

III. TRUE CASH VALUE

Petitioner argues that the Tax Tribunal committed an error of law and adopted a wrong principle by concluding as a matter of law that the net income of a federally regulated nonprofit housing cooperative can never be a reliable indicator of true cash value. Substantively, however, petitioner presents several legal questions that go beyond the scope of the stated issue. Further,

² Former TTR 101(1)(m), Mich Admin Code, R 205.1101(1)(m), defined "valuation disclosure" as "documentary or other tangible evidence in a property tax appeal which a party relies upon in support of the party's contention as to the true cash value of the subject property or any portion thereof and which contains the party's value conclusions and data, valuation methodology, analysis, or reasoning in support of the contention. See also R 205.1252 and R 205.1283." Effective March 20, 2013, the Tax Tribunal Rules were revised and set forth in Mich Admin Code, R 792.10201 *et seq.* The former rules in Rule 205.1111 *et seq.* were rescinded.

petitioner failed to preserve these questions by filing exceptions to the hearing referee's proposed decision with the Tax Tribunal. See *Forest Hills Coop v City of Ann Arbor*, ___ Mich App ___, ___ NW2d ___ (Docket Nos. 305194 and 306479, issued June 12, 2014), slip op at 5, lv pending. But to the extent that a question of law has been raised, we shall consider petitioner's claims. *Id.*

This case involved a decision granting summary disposition. Because no tribunal rule addresses motions for summary disposition, review of such a motion is governed by MCR 2.116. See former TTR 111(4), Mich Admin Code, R 205.1111(4) (where an applicable rule does not exist, the Michigan Court Rules and the APA apply). Although the hearing referee cited both MCR 2.116(C)(8) and (C)(10) as a basis for granting respondent's motion for summary disposition, because the hearing referee referred to and relied on evidence outside the pleadings, review is appropriate under MCR 2.116(C)(10). *Silberstein v Pro-Golf of America, Inc.*, 278 Mich App 446, 457; 750 NW2d 615 (2008). A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Coblentz v City of Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). A motion for summary disposition under MCR 2.116(C)(10) should be granted if the evidence and all reasonable inferences arising therefrom, viewed in a light most favorable to the nonmoving party, establishes that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Walgreen Co v Macomb Twp*, 280 Mich App 58, 62; 760 NW2d 594 (2008).

We agree with petitioner's argument that its actual income is a consideration in determining true cash value. True cash value essentially means fair market value. *Forest Hills Coop*, ___ Mich App at ___, slip op at 6; *Pontiac Country Club v Waterford Twp*, 299 Mich App 427, 434; 830 NW2d 785 (2013). Pursuant to MCL 211.27(1), the "present economic income of structures" is a consideration in determining true cash value. In addition, the housing cooperative at issue in this case, similar to the housing property at issue in *Forest Hills Coop*, is not leased or rented property. *Forest Hills Coop*, ___ Mich App at ___, slip op at 13. Therefore, actual income, and not the definition of "present economic income" for leased or rented property in former MCL 211.27(4), now MCL 211.27(5),³ is used when considering the present economic income of structures. *Id.*

Nonetheless, the Tax Tribunal was not required to use any particular valuation method in determining the property's true cash value. *Forest Hills Coop*, ___ Mich App at ___, slip op at 6, 14; see also *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 484; 473 NW2d 636 (1991). In addition, the hearing referee's decision indicates that he considered petitioner's proposed methodology and, in particular, the capitalization-of-income approach in the valuation disclosure for tax years through 2009, but rejected that approach because the property was not acquired for investment purposes. This determination did not involve an error of law or the adoption of a wrong principle. See *Forest Hills Coop*, ___ Mich App at ___, slip op at 15-16. The Tax Tribunal may exclude valuation evidence that is irrelevant or immaterial to the determination of true cash value. See former TTR 283, Mich Admin Code, R 205.1283.

³ Subsection (4) was redesignated as subsection (5) by 2013 PA 162.

Therefore, the Tax Tribunal did not err in adopting the ALJ's decision to grant summary disposition in favor of respondent pursuant to MCR 2.116(C)(10) with respect to petitioner's proposed capitalization-of-income approach for valuing the property.⁴

We find merit, however, to petitioner's argument that the Tax Tribunal's rejection of its valuation evidence did not warrant dismissal. Although MCL 205.737(3) imposes the burden of proof to establish the true cash value of property on the petitioner, "[a] proceeding before the tribunal is original and independent and is considered de novo." See MCL 205.735(2) (proceedings commenced before January 1, 2007) and MCL 205.737a(2) (proceedings commenced after December 31, 2006). Therefore, even when the petitioner's proofs fail, the Tax Tribunal has a duty to independently determine true cash value. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 355; 483 NW2d 416 (1992); see also *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 409; 576 NW2d 667 (1998).

The Tax Tribunal may adopt the assessed values on the tax rolls as its independent finding of true cash value when competent and substantial evidence supports it. *Pontiac Country Club*, 299 Mich App at 435-436. But contrary to respondent's argument on appeal, the hearing referee's comments regarding its valuation evidence and, in particular, the property record card containing tentative information for tax year 2011, does not establish that the hearing referee was making a determination of true cash value of the property for tax years 1999 through 2010. Rather, the hearing referee concluded that dismissal was required. We conclude that the Tax Tribunal committed an error of law in adopting the hearing referee's order because the failure of petitioner's proofs did not relieve the Tax Tribunal of its duty to independently determine the true cash value of the property.

In sum, we hold that petitioner has failed to establish any basis for disturbing the Tax Tribunal's decision to reject its valuation evidence and to grant respondent's motion for summary disposition with respect to that issue. But the Tax Tribunal committed an error of law in concluding that dismissal was the proper disposition for the failure of petitioner's valuation evidence. Therefore, we reverse the order of dismissal and remand for further proceedings regarding the true cash value of the property and any related issues for the relevant tax years.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald

/s/ Elizabeth L. Gleicher

/s/ Amy Ronayne Krause

⁴ We also reject petitioner's cursory and unpreserved assertion that it should have been allowed to proceed under a "transfer value" approach to determine the true cash value of the property. See *Forest Hills Coop*, ___ Mich App at ___, slip op at 17-18 (rejecting a claim that the Tax Tribunal adopted a wrong principle by not using a proposed "transfer value" approach on the ground that the consideration a person pays as the "transfer value" to acquire the right to occupy a unit does not bear a relationship to fair market value).